

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for return of the security deposit and her filing fee for the claim.

The Tenant served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on May 30, 2009, and deemed received under the Act five days later. Despite this the Landlord did not attend the hearing.

The Tenant provided affirmed testimony and evidence in support of her claim.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenant paid two security deposits; one of \$800.00 on November 16, 2007, and the second of \$250.00 on February 15, 2008.

The Tenant vacated the premises on May 1, 2009. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The Landlord called the Tenant and informed her he was going to deduct \$250.98 from her deposit for utility bills. The Tenant requested copies of the bills and the Landlord did not provide these. He simply kept the amount he felt was owed and returned the balance, without paying any interest.

Analysis

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

There was no evidence to show the Landlord did incoming or outgoing condition inspection reports.

Therefore, based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find the Landlord has breached section 38 of the Act.

Conclusion

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

I find that the Landlord is not entitled to retain any portion of the security deposits or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,166.82**, comprised of double the security deposits (\$1,050.00 x 2) paid, the interest on the original amounts held (\$16.82), and the \$50.00 fee for filing this Application. The Landlord is credited with paying \$799.02 to the tenant, and the Tenant is given a formal Order for the balance due of **\$1,367.80**.

The Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 02, 2009.

Dispute Resolution Officer